

## **Alaska Department of Environmental Conservation**

### **Air Permits Work Group**

November 20, 2002 Meeting Summary

Alaska Housing Finance Corporation Board room

9:00 a.m. to 4:30 p.m.

### **Attendance and opening remarks**

Air Permits Work Group members present: Carl Harmon, Jordan Jacobsen, Tom Kuckertz, Charlotte MaceCay, Mike Munger, Kate Siftar, ADEC Air and Water Quality Director Tom Chapple and Air Permits Manager John Kuterbach.

Also attending were Assistant Attorney General Sara Trent; John Pavitt, inspector with the EPA Alaska Operations Office; and Task Force Facilitation staff Brian Rogers and Judith Erickson

Members of the public also attended.

ADEC Air and Water Quality Director Tom Chapple stressed the important role this work group has in preparing recommendations for the new administration about how the air program should function in the future. He said all aspects of the program are open for discussion, including statutory and regulatory changes and shifts in how the program now operates. Chapple expressed confidence that the new administration will give serious consideration to the work group's recommendations.

### **Work Group Recommendations**

The work group discussed proposed short-term and long-term recommendations for changes to ADEC's air permitting program. The tentative recommendations are listed below. Final action on the recommendations will occur at the December 17 meeting.

#### ***Short-term Recommendations***

##### **Air Permit Program Funding**

- The work group recommends the following steps to assist in resolving the projected funding shortfall in the effort by the Air Permit Program to meet its November 2003 deadline for issuing Title V operating permits.
- Examine the potential for federal facilities to negotiate with the EPA to use SEPs (supplemental environmental projects) to pay third-party contractors to assist in permit writing and/or to train ADEC permit writers. ADEC would oversee the contractors work.
- Allow regulated facilities to elect to pre-pay emissions fees based on potential rather than actual emissions, alleviating this fiscal year's funding shortfall. Any excess fees (potential-actual) could be credited to the facilities and applied against future fees or settlements,
- Request an FY 03 supplemental appropriation.
- Make permit applicants aware of ADEC's November 2003 deadline, and encourage them to work with the department to develop standard permits for multiple-like facilities, and to cut and paste from existing approved permits when preparing their draft permits.

ADEC has agreed with the Environmental Protection Agency (EPA) to issue all pending Title V permits by November 2003. Funding shortfalls, however, could prevent the department from meeting this schedule. The division will experience a cash flow problem this spring if Air Permits Program Manager Kuterbach fills the four new oil and gas positions the Legislature authorized in the FY 03 budget. Additionally, emissions fees, which are intended to cover the division's overhead costs, will not be adequate to support emission fee-supported work. Kuterbach said the shortfall will be no larger than \$290,000.

Absent any workable solution to the funding shortfall, division staff will be reassigned to permit writing. This will result in reduced inspections, compliance assistance work, complainant response, and work on the state implementation plan (SIP) and regulation changes.

### ***Long-term Recommendations:***

#### **Title V Operating Permit Program**

##### *Title V Operating Permit Program restructuring.*

- The state should retain primacy for the Title V operating permitting program.
- Statutory and regulatory changes should be made to the Title V operating permit program so it more closely mimics a federal Part 70 program while taking account Alaska's unique characteristics.
- A benchmarking and process analysis, similar to the effort undertaken for the PSD (prevention of significant deterioration) program, should be initiated for the Title V Operating Permit Program to recommend streamlining opportunities.<sup>1</sup>
- Improve permit quality through the implementation of pre-application meetings and standardized formats.

##### *Technology standards:*

- ADEC should not seek delegation of responsibility for federal technology standards.

##### *Compliance:*

- Compliance must be part of a Title V program in order for ADEC to receive EPA approval.

##### *Program development:*

- There must be a mechanism to keep the air quality program in compliance with changing federal requirements.

All members of the work group support the state retaining primacy for the Title V operating permitting program, provided changes can be made to streamline the program and adequately fund it. Several members believe that making Alaska's Title V operating permit program more like a federal Part 70 program will provide consistent terminology, more streamlined and consistent permit processes and less contention about monitoring, record keeping and reporting. Jordan Jacobsen pointed out that the EPA

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<sup>1</sup> It was pointed out during public comment that the EPA Inspector General has issued an excellent benchmark report that examines Title V programs in six different regions. The report, which examines why programs are working and why others are not, might assist the work group in its efforts to streamline Alaska's Title V program. The report can be read at: [http://www.epa.gov/oigearth/ereading\\_room/TitleV.PDF](http://www.epa.gov/oigearth/ereading_room/TitleV.PDF)

issues information on how to interpret its regulations, making it more user-friendly for permittees. Members agreed that Alaska should adopt a modified federal Part 70 program that takes into account the state's unique characteristics. Kate Siftar recommended the work group's concerns about program streamlining could be addressed through a benchmarking study, similar to the one done for the PSD construction permitting program.

*Areas Open for further discussion:*

- Changing to a strict Part 70 program would address only major sources and facilities that have federal technology standards. How should ADEC permit minor sources?
- How should the fee structure be adjusted to provide sufficient revenue to pay for the Title V operating permit program?
- Can ADEC continue to enforce federal technology standard in its general permits if it has not incorporated the standards in its regulations by reference?
- How should Title V operating permit program compliance efforts be funded? Can compliance efforts be funded in part with state general funds?
- How should ADEC fund its efforts to modify the Title V operating permit program?

**State Air Quality Control Plan:**

- ADEC should continue to require permits for ambient air quality sources.

*Areas open for further discussion:*

- How should ADEC permit minor sources after the Title V operating permit program and the PSD construction permit program are changed to more closely mirror the comparable federal programs?

**PSD/NSR Construction Permits**

*PSD/NSR Construction Permitting Program restructuring:*

- Alaska should continue to maintain a state-approved PSD/NSR (new source review) program.<sup>2</sup>
- ADEC should initiate a project to adopt a PSD construction permitting program that more closely mimics the federal Part 51 PSD program as quickly as possible after new federal PSD rules are adopted.
- The state should continue to address less than PSD-sized changes in emissions.
- The Dept. of Law should conduct a review of the air quality statutes to identify any impediments to a speedy adoption of a new PSD/NSR program that more closely mimics the revised federal Part 51 program. The Dept. of Law should be prepared to draft the necessary statutory changes to implement the recommendation as well as changes necessary to address regulation of minor sources.
- Legislation should be introduced during the 2003 session for discussion during the 2003/04 legislative interim and adoption in 2004.
- The PSD program should be streamlined and adequately staffed so construction permits can be issued within six months of application.

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<sup>2</sup> It was noted that ADEC has never issued a nonattainment new source review (NSR) construction permit.

- ADEC should be authorized and encouraged to use contractors to manage peak work-load demand.

*ORLs/PALs:*

- The state should continue to issue ORLs (owner requested limits) and PALs (pre-approved limits) permits for sources that can maintain operating levels below PSD limits.

*Compliance:*

- The revised PSD construction permitting program must include a compliance program.

There was unanimous support for the notion that Alaska should maintain a state-approved, rather than delegated PSD/NSR construction permitting program. The state's PSD construction permitting program came into effect in 1983, shortly after the federal PSD rules were adopted nationally. John Kuterbach said the state changed its PSD rules as state statutes changed, but the fundamental concepts of the program remained the same. He noted, however, that the guidance and focus of the EPA's PSD program has changed over time.

As soon as possible after federal government makes its expected revisions to the PSD program, the state's PSD construction permitting program should be changed to more closely mimic the revised federal 40 CFR Part 51 (PDS/NSR) program. Jordan Jacobsen pointed out that the new EPA rules will refine the fundamental concepts of the federal program that are already well understood. The decision on whether the first set of revised rules will be adopted is expected by the end of the year. Tom Chapple said a second set of revised regulations, implementing significantly different ideas, is currently out for public comment. If both sets of regulations are adopted as envisioned, Chapple said the sweeping changes in the federal rules will drastically cut down on the number of PSD permits that go through review.

Although PSD permitting might slow down initially while ADEC air permitting staff learn the federal rules, John Kuterbach said a strict federal PSD program might provide for quicker resolution of questions regarding when a permit is needed and what triggers best available technology control (BACT) because there is a body of record that will help the state arbitrate these issues. He noted, however, that sometimes this could make the program less flexible. The federal PSD program differs most visibly from the state program in how increases at a facility are tracked, with the primary difference being the look-back period.

*Areas open for further discussion:*

- How should ADEC issue PSD construction permits for minor sources once it has adopted a PSD construction permitting program that more closely mimics the revised federal PSD program?
- Do changes in the ADEC's PSD program warrant changes in the ORL and PAL permit program?
- How should the state track and manage increments and address cumulative impacts?
- How should ADEC fund its efforts to revise the PSD program.
- How should a PSD compliance program be funded?

**Air Permit Program Fees:**

*Reform of air permitting fee structure*

- ADEC's permitting fee program should be more predictable for permittees.
- The current hourly fee should be eliminated.
- All permittees should pay emissions fees.

- A new fee structure should be developed that takes into account the changes in the Title V operating, PSD construction and minor source permitting programs.
- ADEC should be authorized and encouraged to use contractors to manage peak work-load demand.
- The air permit regulations should allow permit applicants to voluntarily pay the costs of contractors to assist DEC in processing permit applications.

The work group asked ADEC to build a cost-model for the air permitting program based on the work group's anticipated recommendations regarding the Title V operating and PSD construction permitting programs, and asked the agency to evaluate the level of funding needed to meet federal requirements over the next three fiscal years. Included in the analysis will be the costs for ADEC to make the necessary statutory and regulatory changes to its air permitting program, including any needed work group processes, and to enhance its service delivery. The department was asked to evaluate how a new funding regime that utilizes a fixed application fee and emissions fees (or a set of fixed fees plus emissions fees) will impact permittees.

*Areas open for further discussion:*

- How to design the new fee structure based on the Title V operating permit and PSD construction permit program reforms?
- What level of funding will be needed to allow the Air Permits Program to issue permits within six months?

**Unique Characteristics of Alaska:**

- Alaska's unique characteristics should be considered in the development of air quality regulations and permit conditions.

The work group is in the final stages of editing a document that details Alaska's unique characteristics. Members discussed how ADEC should address these unique characteristics when developing permits.

*Areas open for further discussion:*

- How should ADEC address these unique characteristics when developing permits?

**Air Permitting Program mission statement:**

The mission statement subgroup, made up of work group members Charlotte MacCay and Tom Kuckertz, used information submitted by ADEC at the October 25 meeting (1993 air permits legislation intent and goals, and ADEC's mission and measures as established by the Legislature in HB 250 relevant to the Air Permitting Program) to develop a draft mission statement for the Air Permitting Program. The draft mission statement was written as a guideline for program employees. Kate Siftar recommended that perhaps a second, more formal mission statement be written to convey the program's mission to the Legislature.

Before the next meeting, work group members will send their comments on the mission statement to facilitator Brian Rogers for consolidation into one document. The work group will finalize the mission statement at its December 17 meeting.

## **Benchmark Study recommendations update**

Work group members heard a report from Air Program Manager John Kuterbach on implementation. The department's implementation of recommendations in the *Benchmarking and Process Analysis Report* for procedure and process improvements to the construction air permit program.

The recommendations are grouped into five categories: improving the staffing quality, improving the quality of permits, improving the overall process, improving internal communications and other recommendations.

Kuterbach reported that a study is expected to be completed soon on the recommendation to standardize the application format, making it easier for ADEC staff to find and identify required data. The recommendation also calls for current information and data to support the application process to be posted on the department's web site.

A second contract will be issued soon to work on recommendations to clarify acceptable application elements and the requirements for use of EPA guidance and alternative models. Kuterbach said the division will next work on standardizing a process to resolve technical disagreements. He is also looking at performance standards for his program staff.

### **Final report:**

The work group will finalize its recommendations at the December 17 meeting. Those recommendations will be consolidated into a draft final report that will be circulated to all work group members for comment shortly after the meeting. The final work group report will be forwarded to ADEC on December 31, 2002.

### **December meeting:**

The work group will hold its fourth and final meeting on December 17, in the AOGA conference room at 121 West Fireweed Lane, Anchorage, Alaska. The meeting will begin at 8:45 a.m. and will run until the work group has completed its work. The meeting will be teleconferenced.